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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SARVI ESQUIVEL, by and through her
guardian ad litem, MARJORIE A.
GUYMON, ESQ.

Case No.: 2-13-cv-01968-GMN-CWH

Plaintiff,
vs.

**EX PARTE MOTION FOR COURT
APPROVAL
OF SETTLEMENT**

WAL-MART STORES, INC., an Delaware Corporation doing business in Nevada as WAL-MART STORES, INC., DOES I through X, inclusive; and ROE BUSINESS ENTITIES I through X, inclusive,

Defendants.

Plaintiff, SARVI ESQUIVEL, by and through her attorneys of record, PETER S. CHRISTIANSEN, ESQ. and R. TODD TERRY, ESQ. of CHRISTIANSEN LAW OFFICES, hereby brings this *Ex Parte Motion For Court Approval of Settlement*. This Motion is made and based upon all of the pleadings and papers on file in this action, as well as the attached Declaration, Memorandum of Points and Authorities and proposed motion.

Dated this 19th day of January, 2016.

CHRISTIANSEN LAW OFFICES

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PETER S. CHRISTIANSEN, ESQ.
Nevada Bar No. 5254
R. TODD TERRY, ESQ.
Nevada Bar No. 6519
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff, Marjorie Guymon, Esq., as guardian ad litem of Sarvi Esquivel, brings the instant motion for court approval of settlement in this matter.

II.

BACKGROUND

This case is an action for personal injuries wherein a bicycle fell from a rack at a Wal-Mart Store onto Ms. Esquivel's head, thereby causing substantial injuries, including traumatic brain injury. Ms. Esquivel initially retained The Firm to prosecute her case. The Firm later associated David Sampson, Esq., to help prosecute the claims. (The Firm and Mr. Sampson will be referenced as "prior counsel" hereinafter) While Ms. Esquivel was represented by prior counsel, some of her claims and damages were dismissed and important deadlines were missed. On October 2, 2014, Magistrate Hoffman dismissed Ms. Esquivel's claims for neuropsychological injuries because prior counsel failed to arrange for her appearance at a Court ordered IME in California. Prior counsel also failed to seek reconsideration, appeal or object to Magistrate Hoffman's Order within the applicable time frame. Additionally, certain expert witness disclosures were either inadequate or the deadlines were missed. Prior counsel retained the services of economist expert, Stan Smith, to offer opinions concerning his calculations of the present value of Plaintiff's future medical treatment. However, prior counsel appeared to have never disclosed Mr. Smith as an expert witness, and the report he is believed to have prepared was dated after expert disclosure deadlines had already passed. Finally, prior counsel never itemized and disclosed Plaintiff's injuries and damages as required under the Federal Rules of Civil Procedure and as such, the extent of Plaintiff's medical treatment and cost thereof would not likely be admitted at trial. Prior counsel failed to disclose any future treatment beyond head injury treatment, including a future neck surgery.

On March 19, 2015, an Order was entered permitting the undersigned to substitute in as
counsel for Ms. Esquivel. Since that time, the undersigned, on behalf of Ms. Esquivel, filed

1 numerous briefings before this Court concerning this litigation in an attempt to undue the harm
 2 to Ms. Esquivel's case caused by her prior counsel's actions/inactions. Additionally, Ms.
 3 Esquivel, Ms. Guymon (Plaintiff's Guardian Ad Litem), and the undersigned contacted legal
 4 malpractice counsel to evaluate the possibility of obtaining relief for Ms. Esquivel through a
 5 malpractice claim against her former counsel.

6 The undersigned also became aware of Ms. Esquivel's lack of capacity to understand the
 7 risks associated with the prosecution of her claims, and on June 16, 2015, this Honorable Court
 8 stayed further proceedings to allow the appointment of a guardian ad litem over the Ms.
 9 Esquivel. On August 28, 2015, this Court entered an Order appointing Marjorie A. Guymon,
 10 Esq. as the guardian ad litem for Sarvi Esquivel solely for the purposes of this litigation. Since
 11 that time, Ms. Guymon has evaluated the current position of the litigation, including the
 12 settlement offer extended by Defendant. Ms. Guymon has concluded that it is in the best
 13 interest of the ward to accept Defendant's settlement offer.

14 III.

15 LEGAL ARGUMENT

16 A guardian ad litem in a federal lawsuit is responsible in protecting the interests of the
 17 incompetent ward. *Adamson v. Hayes*, 2010 WL 5069885, at *5-6 (D. Ariz. Dec. 7, 2010)
 18 (citing *Richards v. Duke University*, 166 Fed. Appx. 595, 599 (3d Cir. 2006)). "A guardian ad
 19 litem is not appointed to serve as counsel but to 'act for the [ward] in the cause, with authority
 20 to engage counsel, file suit, and to prosecute, control, and direct the litigation.'" *Id.* (citing *Noe
 21 v. True*, 507 F.2d 9, 12 (6th Cir. 1974); *Fong Sik Leung v. Dulles*, 226 F.2d 74, 82 (9th Cir.
 22 1955)). The guardian ad litem is authorized to make any appropriate decision on behalf of the
 23 ward during the course of a specific litigation. *Id.* (citing *Thomas v. Humfield*, 916 F.2d 1032,
 24 1034 (5th Cir. 1990)); *see also Fong Sik Leung v. Dulles*, 226 F.2d 74, 82 (9th Cir. 1955).

25 "A guardian ad litem is authorized to act on behalf of his ward and may make all
 26 appropriate decisions in the course of specific litigation. For example, notwithstanding the
 27 incompetency of a party, the guardian may . . . settle the claim on behalf of his ward." *United
 28 States v. 30.64 Acres of Land, More or Less, Situated in Klickitat City., State of Wash.*, 795 F.2d

1 796, 805 (9th Cir. 1986). “A guardian ad litem is appointed as a representative of the court to
 2 act for the [ward] in the cause, with authority to engage counsel, file suit and to prosecute,
 3 control and direct the litigation.” *Fong Sik Leung, supra.* Appointing a guardian ad litem
 4 “deprives the litigant of the right to control the litigation. *Adamson v. Hayes*, 2010 WL
 5 5069885, at *5-6 (D. Ariz. Dec. 7, 2010) (quoting *Thomas v. Humfield*, 916 F.2d 1032, 1034
 6 (5th Cir. 1990)).

7 When a guardian ad litem accepts a settlement offer and submits it for court approval,
 8 the court must then determine if the settlement serves the best interest of the ward. *Dacanay v.*
 9 *Mendoza*, 573 F.2d 1075, 1080 (9th Cir. 1978). “It is the court’s order approving the settlement
 10 that vests the guardian ad litem with the legal power to enforce the agreement.” *Id.* at 1079.

11 Here, Ms. Esquivel no longer has the “right to control the litigation” because this Court
 12 appointed Ms. Guymon as her guardian ad litem. Rather, it is Ms. Guymon who has the power
 13 to control the litigation. Part of this power includes accepting a settlement offer if she believes
 14 it is in the best interest of the ward. Defendant has extended an offer to settle this matter in the
 15 amount of \$125,000. Ms. Esquivel has medical liens exceeds the amount of \$200,000, as well
 16 as an attorneys’ lien from her prior counsel in the amount of \$40,000. The medical liens
 17 include treatment and claims that has already been excluded by this Court.

18 Ms. Guymon, evaluating all of the case strengths and weaknesses, including whether to
 19 proceed to trial or accept settlement, believes that accepting Defendant’s current settlement
 20 offer is in the best interest of Ms. Esquivel.¹ This conclusion is based on the evidence that
 21 Plaintiff would be able to admit, i.e., treatment for neck injuries (but not future treatment
 22 because it was never disclosed and the exclusion of head/brain injuries). The decision is also
 23 based on the amount of discovery that has been done concerning liability. Depositions were not
 24 taken and evidence was not obtained to support Plaintiff’s claims for negligence. In short, the
 25 Guardian Ad Litem believes that a jury verdict in an amount less than \$125,000 is likely
 26 because of the evidence that was not disclosed or properly disclosed. Therefore, the Guardian

27
 28 ¹ See Declaration of Ms. Guymon attached hereto as Exhibit 1, regarding settlement and her beliefs as to why
 settlement is in the best interests of Ms. Esquivel.

1 Ad Litem requests that the Court enter an order determining that acceptance of the settlement
2 offer is in the best interest of Ms. Esquivel.

3 **IV.**

4 **CONCLUSION**

5 Based on the foregoing facts, law, and analysis, Plaintiff respectfully requests that this
6 Court approve the settlement.

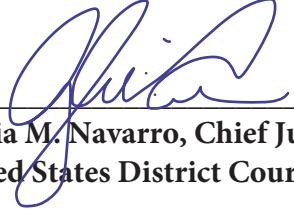
7 Dated this 19th day of January, 2016.

8 **CHRISTIANSEN LAW OFFICES**

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10 PETER S. CHRISTIANSEN, ESQ.
11 Nevada Bar No. 5254
12 R. TODD TERRY, ESQ.
13 Nevada Bar No. 6519
14 *Attorneys for Plaintiffs*

15 **IT IS SO ORDERED.**

16 DATED this 10 day of February, 2016.

17 
18

19 Gloria M. Navarro, Chief Judge
20 United States District Court

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EXHIBIT 1

1 CODE: AFFT
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13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**

15 **FAMILY DIVISION**

16 **CLARK COUNTY, NEVADA**

17 SARVI ESQUIVEL, by and through her)
18 guardian ad litem, MARJORIE A.)
19 GUYMON, ESQ.) Plaintiff,
20 vs.)
21 WAL-MART STORES, INC., a Delaware)
22 Corporation doing business in Nevada as)
23 WAL-MART STORES, INC., DOES I through)
24 X, inclusive; and ROE BUSINESS ENTITIES I)
25 through X, inclusive,)
26 Defendants.)
27 _____
28

Case No.: 2-13-cv-01968-GMN-CWH

19 **AFFIDAVIT OF MARJORIE A. GUYMON, ESQ.**

20 STATE OF NEVADA)
21 COUNTY OF CLARK)

22 COMES NOW, MARJORIE A. GUYMON, ESQ. of GOLDSMITH & GUYMON, P.C., having
23 been duly sworn upon her oath and under penalty of perjury states as follows:

24 1. I am the guardian ad litem for the above named Plaintiff. I am a licensed attorney in Nevada and
25 Utah admitted to practice before this Court.
26
27
28

1 2. I am competent in every respect to testify to the facts alleged herein upon my personal
2 knowledge, except as to those asserted upon information and belief and as to those I believe
3 them to be true.

4 3. On June 16, 2015, I was appointed as Guardian Ad Litem for Sarvi Esquivel solely for the
5 purposes of this litigation.

6 4. I have reviewed the status of this litigation with counsel of record and also with independent
7 counsel. I was apprised of possible malpractice on the part of prior counsel in this case. I also
8 discussed with independent counsel the possibility of obtaining relief for Sarvi through a
9 malpractice claim against her prior counsel.

10 5. I have evaluated the current position of the litigation, including the settlement offer extended by
11 the Defendant.

12 6. I have evaluated the case strengths and weaknesses, including whether to proceed to trial or
13 accept settlement.

14 7. I have concluded that it is in the best interest of Sarvi to accept the Defendant's current
15 settlement offer. I have discussed the same with Sarvi; however, I believe she lacks capacity to
16 understand the risks associated with prosecuting her claims.

17 8. My conclusion to accept the settlement is based upon my understanding that Sarvi would be able
18 to submit evidence for the necessary treatment for her neck injuries; however, she would be
19 unable to submit evidence regarding her brain injuries, proposed spinal surgery and future
20 medical expenses due to the failure to comply with discovery and disclosure requirements by this
21 court. Also, I understand that Sarvi has been precluded by the court from presenting any expert
22 testimony on her injuries. Upon information and belief the alleged bicycle that fell on Sarvi's
23 head causing her physical harm was not preserved, and there may be conflicting testimony as to
24 what actually fell on her.

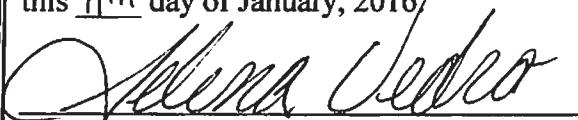
25 9. My decision is also based on the amount of discovery that has been done concerning liability.
26 Upon information and belief no depositions were taken and no evidence was obtained to support
27 Sarvi's claims of negligence.

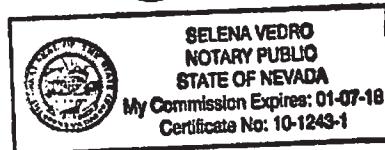
1 10. I believe that a jury verdict in an amount less than \$125,000.00 is likely because of the above
2 alleged facts.

3 Further this affiant sayeth naught.
4
5
6

7 Marjorie A. Guymon, Esq.
8
9

10 SUBSCRIBED AND SWORN to before me
11 this 11th day of January, 2016,

12 



13 Notary Public in and for said
14 County and State

15
16 SUBMITTED BY:

17 CHRISTIANSEN LAW OFFICES

18 Peter S. Christiansen, Esq.
19 Nevada Bar No. 5254
20 Email: pete@christiansenlaw.com
21 810 S. Casino Center Blvd., Suite 104
22 Las Vegas, Nevada 89101
23 Attorneys for Plaintiff

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